

BOARD OF APPEALS CASE NO. 4854

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BEFORE THE

APPLICANT: Malcolm Whyte

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to permit
an outdoor paint ball operation in the AG
District; 2429-B Old Robin Hood Road,
Havre de Grace**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/14/98 & 10/21/98

HEARING DATE: December 9, 1998

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Record: 10/16/98 & 10/23/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Malcolm Whyte, is requesting a Special Exception to Section 267-53(A)(10) of the Harford County Code, to permit an outdoor paint ball operation in an Agricultural District.

The subject parcel is owned by the Applicant's father, William M. Whyte, Sr., and is located at 2429-B Old Robin Hood Road in the Second Election District. The parcel is identified as Parcel No. 291, in Grid 1-B, on Tax Map 52. The parcel contains 66.164 acres, more or less, all of which is zoned Agricultural.

Mr. Malcolm Whyte appeared and testified that he is requesting a Special Exception to operate a paint ball facility. The witness said that the activities would generally be conducted towards the middle of the parcel, approximately 1,500 feet from Robin Hood Road, that the boundaries which the paint ball players use are well marked and that a safety seminar is conducted before each game. The witness said he did not feel there would be a significant traffic impact from the operation because the starting time for each game is staggered similar to that of a golf course and that generally 3 people arrive in each automobile and the average stay is 2-1/2 to 3-1/2 hours. The witness introduced a letter as Petitioner's Exhibit No. 2, from Phyllis G. Brock, Director of Planning and Community Development for the City of Aberdeen. The letter was directed to Mr. Anthony McClune, Chief of Current Planning for Harford County Department of Planning and Zoning and indicted that the City of Aberdeen was offering no comment on the Applicant's request and that the proposed paint ball operation would not impact the City of Aberdeen.

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Mr. Whyte explained that the hours of operation will be limited from 8:00 a.m. to one-half hour after sunset on Monday through Saturday, and from 9:00 a.m. to one-half hour before sunset on Sundays. All operations will be concluded by 8:00 p.m., except the Applicant said that one weekend lights would be used to conduct activities after dark. Mr. Whyte said that the noise generated by the activity is not very loud and because of the distance from the nearest residential area, should not create a problem in the neighborhood.

Mr. Anthony McClune, Chief of Current Planning for the Department of Planning and Zoning, appeared and testified that Staff members have visited the site, have reviewed the proposed activities and do not feel that approval of the Special Exception will have a detrimental impact on the neighborhood. Mr. McClune went on to explain that the only Code section which applies would be Section 267-53(A)(10), which does not specifically mention paint balls. However, Mr. McClune said that prior Board of Appeals cases and a Court of Special Appeals case have found that Section to be the applicable Section to a paint ball operation. Mr. McClune said that the Department of Planning and Zoning recommends conditional approval of the Applicant's request.

Several area residents appeared and cross-examined the Applicant with respect to setbacks, noise, and environmental matters but did not testify in opposition to the Applicant's request.

CONCLUSION:

The Applicant is requesting a variance to operate paint ball games, pursuant to Section 267-53(A)(10), which provides:

Trap, skeet, rifle or archery ranges, outdoor. These uses may be granted in the AG, CI and GI Districts, provided that:

- (a) A minimum parcel area of seventy-five (75) acres shall be required for all rifle and pistol ranges. A minimum parcel area of twenty-five (25) acres shall be required for all trap, skeet and archery ranges.
- (b) Discharging of firearms or release of arrows shall not be permitted within five hundred (500) feet of any property line.
- (c) Such range is constructed in such a manner as to eliminate danger to persons or property from flying projectiles.
- (d) The manner and times of operation shall be such that there will be no

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resulting detrimental disturbances to residential neighborhoods.

- (e) The facilities shall be designed so that the topographic features of the parcel are used to enhance safety and minimize firearm noise.

The uncontradicted testimony of the Applicant was that prior Board of Appeals and Court of Special Appeals decisions found that 25 acres is necessary for a paint ball operation and that the subject parcel contains 66 acres. The Applicant's witness said that no paint ball activities would occur within 500 feet of any property line and that the range and paint ball activities will take place near the center of the parcel which is surrounded by woodland. The Applicant also testified he would comply with the conditions with respect to hours of operation.

No evidence was introduced to indicate that the operation of a paint ball facility on the subject parcel would have any greater impact than if held elsewhere in the zoning district. Likewise, no testimony was introduced to indicate that the proposed activities would adversely impact Section 267-9(l), regarding "Limitations, Guides and Standards".

The majority of the property is wooded except for a parking area and the open area in the woods where the games will be conducted. Woodlands, along with the topography of the site will provide an adequate buffer and the testimony indicates that the guns themselves make very little noise.

It is the finding of the Hearing Examiner that the proposed activity will not have any greater impact on the subject parcel than if held elsewhere in the zoning district.

Therefore, it is the recommendation of the Hearing Examiner that the request of the Applicant be approved, subject to the following conditions:

1. The Applicant shall submit a site plan for review through the Development Advisory Committee.
2. The Applicant shall obtain all necessary permits and inspections.
3. The Applicant shall maintain a 125 foot buffer to all property lines and a minimum of 500 feet from Old Robin Hood Road.

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4. The hours of operation shall be from 8:00 a.m. to 8:00 p.m., Monday through Saturday. The hours of operation on Sundays shall be from 9:00 a.m. to 8:00 p.m. or to one-half hour after sunset, whichever is later.
5. No lighting shall be permitted for play after dusk except on one weekend per month activities may be conducted which require lighting.
6. The number of participants shall be limited to 100 individuals per game session.

Date JANUARY 7, 1999

**L. A. Hinderhofer
Zoning Hearing Examiner**